

Resolution No.:	18-699
Introduced:	January 17, 2017
Adopted:	January 17, 2017

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY MARYLAND**

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Lead Sponsor: County Council

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**SUBJECT:** Approval of Executive Regulation 5-16 AM, Contracts and Procurement – Health Insurance Preference

**Background**

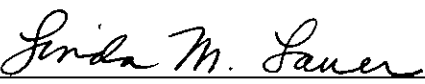
1. The Montgomery County Code §11B-77(b) authorizes the County Executive to submit this regulation under Method 2.
2. On July 19, 2016, The County Council received Executive Regulation 5-16, Contracts and Procurement – Health Insurance Preference. The Council received Executive Regulation 5-16 AM on November 15, 2016.
3. The Council reviewed the regulation under Method (2). Under Method (2), if the Council does not approve or disapprove a regulation within 60 calendar days after the Council receives the regulation, the regulation automatically takes effect.
4. The Council approved Resolution 18-573 on August 2, 2016 to extend time for consideration to December 31, 2016.
5. On December 12, 2016, the Government Operations and Fiscal Policy and Health and Human Services Committees reviewed Executive Regulation 5-16AM, Contracts and Procurement – Health Insurance Preference and recommended approval.
6. The Council approved Resolution 18-694 on December 13, 2016 to extend time for consideration to June 30, 2017.

**Action**

*The County Council for Montgomery County Maryland approves the following resolution:*

The Council approves Executive Regulation 5-16AM, Contracts and Procurement – Health Insurance Preference.

This is a correct copy of Council action.

  
Linda M. Lauer, Clerk of the Council



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Contracts and Procurement-Health Insurance Preference	Number 5-16 AM
Originating Department Department of Health and Human Services	Effective Date January 17, 2017

Montgomery County Department of Health and Human Services

Regulation on:

## **CONTRACTS AND PROCUREMENT – HEALTH INSURANCE PREFERENCE**

Issued by: County Executive

Regulation No: 5-16

COMCOR No: 11B.77.01

Authority: Montgomery County Code (2014) Section 11B-77(b)

Supersedes: None

Council Review: Method (2) under Code Section 2A-15

Register Vol. 33 No. 5

Effective Date: January 17, 2017

Comment Deadline: May 30, 2016

**SUMMARY:** This regulation covers the Procurement Certification process for an Applicant to receive a procurement preference in consideration of its offer to provide services to Montgomery County. The Certification process establishes a business as a "Small Business With Health Insurance," to be eligible for a Montgomery County Procurement preference.

**STAFF CONTACT:** Clark Beil, Sr. Administrator  
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**BACKGROUND INFORMATION:** This regulation establishes the operating standard for a preference to an offeror in the County's procurement of services, where the offeror is a small business that provides health insurance to its employees.



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## **11B.77.01.01 Authority**

This regulation establishes definitions, processes, and procedures to administer and implement a preference for a Small Business with Health Insurance, authorized under Montgomery County Code, Chapter 11B, Article XVII and codified at §§ 11B-77.

## **11B.77.01.02 Definitions**

Terms defined in Montgomery County Code, Section 11B-77(a), Preference for a Small Business with Health Insurance, are specifically incorporated herein and made part of this regulation and are not redefined. Terms defined in Montgomery County Code, Section 11B-65, Local Small Business Reserve Program, do not apply to this regulation, unless otherwise expressly stated.

- (a) “Applicant” means a business applying to become a Certified Small Business with Health Insurance.
- (b) “Certified Small Business with Health Insurance” means a business that has successfully applied and been approved by the Director for a procurement preference under this regulation.

## **11B.77.01.03 Application Process**

(a) This regulation covers the Certification process for an Applicant to receive a Health Insurance Evaluation Factor for an offer made in response to a County Request for Proposal (RFP), or a Percentage Price Preference for an offer made in response to a County Invitation for Bid (IFB). If successful, the Applicant becomes a Certified Small Business With Health Insurance. A Health Insurance Evaluation Factor or Percentage Price Preference may only be applied to a Certified Small Business With Health Insurance in response to a Formal Solicitation.

(b) An Applicant must submit an application to the County establishing that it qualifies as a Small Business With Health Insurance as defined in Montgomery County Code, Section 11B 77(a). An application must include:

- (1) a sworn affidavit by the owner(s), officer or individual with authority to bind the business, attesting that the Applicant is not subject to the employer shared responsibility (ESR) provision of the Patient Protection and Affordable Care Act (ACA) because it employs 50 or



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fewer full-time equivalent employees. The affidavit must include a list of the names of all full-time employees, and the average hours they work every month. If Applicant employs part-time or seasonal workers, the affidavit must also include a complete count of the average hours of service performed by all employees who are not classified as full-time employees under the ACA, for every month of the 12-month period prior to the date of the application; and either

(2) an insurance broker's certificate showing the Applicant provides health insurance to its employees; or

(3) a sworn affidavit by the owner(s), officer or individual with authority to bind the business, attesting that the Applicant has provided its employees with 2 hours paid time off to obtain health insurance from another source, and employees have obtained health insurance from another source.

(c) The County will advise each Applicant within 30 days after the receipt of an application if the application is not complete, along with information delineating the steps that Applicant must take to complete the application. Incomplete applications will not be processed.

(d) The County will process an application to become a Certified Small Business with Health Insurance within 60 days after its receipt of a complete application.

(e) The County may request clarification of information contained in the application at any time in the Certification process. The County will take into account any clarification made by an Applicant in response to the County's request for clarification.

(f) The Applicant must inform the County of any changed circumstances that may adversely affect its Certification during the application process. Failure to inform the County of any changed circumstances constitutes good cause for which the County may deny Certification.

(g) The Director's decision regarding Certification will be based on circumstances existing on the date of application, except where Applicant provides clarification pursuant to subsection (e), or informs the County of changed circumstances as provided in subsection (f).



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## 11B.77.01.04

### Approval or Denial of an Application

- (a) The Director is authorized to approve or deny an application to become a Certified Small Business With Health Insurance. The Department of Health and Human Services ("DHHS") will receive, review and evaluate all Certification applications.
- (b) The Director's decision to approve or deny an Applicant's Certification will be in writing.
- (1) If the Director denies Certification, the Director will state the specific reasons and will inform the Applicant of its appeal rights as provided by Montgomery County Code Section 11B-77(f).
- (2) If the Director approves Certification, the date of the written approval is the effective date on which the Applicant becomes a Certified Small Business With Health Insurance, for purposes of determining the Certification term.
- (3) The term of Certification is for 2 years from the date of the County's written approval. The Certified Small Business with Health Insurance must submit a supplemental affidavit between March 15 and March 31 each year attesting to the fact that it continuously maintains the standards that formed the basis for its Certification during the Certification term. The Certified Small Business with Health Insurance must inform the County of any changed circumstances that may adversely affect its Certification status.

## 11B.77.01.05

### Procedures for Suspension or Revocation of Certification

- (a) After a business becomes certified, the County may initiate a Certification examination if it receives credible information that raises questions regarding the business's Certification status. Upon completing the Certification examination, the County will issue a written decision regarding the status of the questioned Certified Small Business with Health Insurance.
- (b) The Director may suspend or revoke the Certification of a Certified Small Business with Health Insurance prior to the end of the Certification term in accordance with the procedures for notice and a hearing set forth by Montgomery County Code Section 11B-77(f)..



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(c) After the effective date of suspension or revocation, a previously Certified Small Business with Health Insurance is no longer eligible to appear as certified in the Certified Small Business With Health Insurance database. A previously Certified business is obligated to fully perform any and all previously awarded contracts to the completion of the existing term of performance, unless the County terminates the contract for cause or convenience, or by mutual termination.

## **11B.75.01.06 Procurement Preference Implementation**

- (a) The Office of Procurement will state the Health Insurance Preference Law requirements in a Formal Solicitation governed by this regulation.,
- (b) At the time of a bid or proposal submission, the offeror must submit a Small Business with Health Insurance Certification to be deemed eligible for a preference under this regulation.
- (c) The Office of Procurement will implement the "Health Insurance Evaluation Factors" for a Request for Proposal (RFP) and a "Percentage Price Preference" for an Invitation for Bid (IFB), as follows:
  - (1) Any offer made in response to an RFP by a responsible Certified Small Business with Health Insurance must receive a Health Insurance Evaluation Factor equal to 3% of the total points contained in the RFP's evaluation criteria.
  - (2) Any responsive bid to an IFB made by a responsible Certified Small Business with Health Insurance must receive a Percentage Price Preference equal to 3% of the bidder's total price.

## **11B.75.01.07 Penalty; Enforcement**

In addition to that stated under County Law, or a particular contract, the following constitutes a material breach of contract: (a) any person or business who willfully makes a false statement to a County official or employee for the purpose of influencing the Certification status of a Small Business with Health Insurance; or (b) fraudulently obtains, attempts to obtain, or aid another person or business in fraudulently obtaining or attempting to obtain Certification as a Small Business with Health



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Insurance. Accordingly, upon the material breach of the contract described above, the County may then exercise any available remedy, including termination of the contract for default and revocation of Certification status.

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Isiah Leggett  
County Executive

Approved as to form and legality:

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Office of the County Attorney/Date